

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PIONEER KABUSHIKI KAISHA d/b/a
PIONEER CORPORATION,

Opposer,

v.

NISSEI SANGYO AMERICA, LTD. n/k/a
HITACHI HIGH TECHNOLOGIES AMERICA,
INC.,

Applicant.

Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

Published: March 19, 2002

07-08-2003

U.S. Patent & TMOfr/TM Mail RcptDt. #11

**MOTION FOR SANCTIONS,
INCLUDING DISMISSAL, PURSUANT TO 37 CFR §2.120(g)(2)**

Applicant Hitachi High Technologies America, Inc. ("Applicant"), moves for sanctions pursuant to 37 CFR §2.120(g)(2) against Opposer, Pioneer Kabushiki Kaisha d/b/a Pioneer Corporation ("Pioneer"). Since the commencement of this Opposition proceeding, Pioneer has engaged in a campaign of harassment in conducting its discovery (described below). When the time came for Pioneer to produce its own witnesses for depositions, Pioneer failed to produce its witnesses and failed to provide any reasonable excuse. Pioneer cavalierly refused to appear even though Applicant's counsel had traveled from Chicago to Los Angeles to take the depositions. Such conduct was obviously part of Pioneer's campaign of "hard-ball" litigation, and should not be tolerated by the Board.

Though the Board does not have authority to hold Pioneer in contempt or award fees and expenses, it does have broad powers under 37 CFR § 2.120(g)(1) and (2) to deal with Pioneer's conduct. For the reasons set forth below, Applicant requests that the Board impose the most serious sanction, namely, judgment against Pioneer in the Opposition proceeding. Alternatively,

Applicant requests that Pioneer be required to present its witnesses in Chicago for their depositions and that Pioneer be barred from any further discovery, since discovery closed on July 6, 2003.

Pioneer's Failure To Appear

1. Applicant properly served a notice for the deposition of Pioneer Corporation upon Pioneer's counsel pursuant to Fed. R. Civ. P. 30(b)(6) via overnight delivery on June 5, 2003. Applicant also properly served a notice for the deposition of Craig McMannis, an employee of Pioneer, on the same date. (McGrath Decl. ¶ 2). Copies of these notices of deposition are attached hereto and marked as Exhibits A and B.

2. The deposition notices state that the depositions were to be conducted on July 2, 2003, and were to begin at 9:00 a.m., at 16890 Ventura Boulevard, Suite 315, Encino, California 91436. Discovery in this matter was scheduled to close on July 6, 2003, so it was important that the depositions occur on the appointed date.

3. Pioneer's attorney, Robert Skousen, was aware that the 30(b)(6) deposition of Pioneer and the deposition of Mr. McMannis were scheduled for July 2, 2003. On at least two occasions in the two weeks prior to July 2, Mr. Skousen orally confirmed to Applicant's counsel, William T. McGrath, that depositions would take place as scheduled on July 2. (McGrath Decl. ¶ 3).

4. On Monday, June 30, 2003, at approximately 4:00 p.m. CST, Mr. McGrath spoke with Mark Bush, an attorney from Mr. Skousen's office. Mr. McGrath was following up on several prior inquiries about whether Pioneer had any further documents to produce before the depositions. Mr. Bush was uncertain whether any more documents would be produced, but said he would try to find out. Mr. McGrath asked Mr. Bush to respond promptly because Mr.

McGrath would be leaving the office at about 5:15 p.m. and would be traveling to California the next day, Tuesday, July 1, 2003. In that conversation, Mr. Bush made no mention of the fact that Pioneer would not produce its witnesses as scheduled for July 2. (McGrath Decl. ¶ 4).

5. Mr. Bush did not call Mr. McGrath back before the end of the day. When Mr. McGrath left his office at 5:15 p.m., neither Mr. Skousen nor Mr. Bush had given any indication that the depositions might not or would not proceed on July 2. (McGrath Decl. ¶ 4).

6. Mr. McGrath departed Chicago for California first thing in the morning on July 1, 2003, intending and prepared to conduct the noticed depositions at the scheduled place and time.

7. Unbeknownst to Mr. McGrath, Pioneer's counsel in California had, after the close of business the evening before, sent a letter by facsimile to Mr. McGrath's office stating that Pioneer "will not be attending the depositions scheduled for July 2, 3003." A copy of the letter is attached hereto and marked as Exhibit C. The letter was sent after 5:00 p.m. California time, and arrived in Applicant's counsel's office at 7:07 p.m. CST. Mr. McGrath was not aware of this letter prior to departing for California. (McGrath Decl. ¶ 5). A copy of the fax log for Applicant's counsel's office, showing the transmission at 7:07 p.m. CST is attached hereto and marked as Exhibit D.

8. After arriving in Los Angeles on July 1, 2003, Mr. McGrath learned of the cancellation of the depositions and spoke by telephone twice to Pioneer's counsel, Mr. Skousen. In each of these conversations Mr. McGrath insisted that the depositions proceed on July 2. Mr. Skousen stated he did not learn of the unavailability of the witnesses until approximately 4:30 p.m. (P.S.T.) on June 30, 2003. Mr. Skousen represented unequivocally that Pioneer would not be producing any witnesses at the deposition, stating that the witnesses were "out of the state." No reasonable explanation was provided as to why they were out of state on the day their

deposition was scheduled, or why Pioneer did not inform anyone about this unavailability sooner. (McGrath Decl. ¶ 6).

9. On July 2, 2003, at the time and place scheduled for the depositions, counsel for Applicant appeared. While Mr. Skousen was present, neither Mr. McMannis nor Pioneer's 30(b)(6) designee appeared. (McGrath Decl. ¶ 7). Copies of the affidavits of non-appearance are attached hereto as Exhibits E and F.

10. Prior to learning on July 1 that neither Mr. McMannis nor Pioneer's 30(b)(6) designee would be produced for their July 2 depositions, Applicant and its counsel had no reason to believe that the depositions would not occur as noticed.

11. The cancellation of the scheduled depositions has resulted in prejudice to Applicant that may only be remedied by appropriate sanctions being entered by the Board.

12. Specifically, Applicant has been unable to discover facts that would be essential to its defense in this matter.

13. The cancellation of the depositions by Pioneer with such short notice and without excusable cause resulted in substantial expense and inconvenience to Applicant. Counsel for Applicant was required to spend many hours travelling to the site of the depositions, which necessitated two full days away from the office during a busy period of time immediately preceding a national holiday.

14. Pursuant to 37 CFR 2.120(g)(2) and TBMP 527.02, "if a party, or an officer, director, or managing agent of a party, or a person designated under [Fed. R. Civ. P. 30(b)(6)] to testify on behalf of a party, fails to attend the party's or person's discovery deposition, after being served with proper notice . . . and such . . . party's attorney informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in

[37 CFR 2.120](g)(1)." Subsection (g)(1) authorizes the Board to make "any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure" (except contempt or expenses). Rule 37(b)(2) permits, among other things, "an order ... dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." See also TMBP, 527.03.

15. Pioneer's offer in Exhibit C to make one witness (not both) available from July 14 to July 17 is inadequate. Discovery closed on July 6. Pioneer has not offered Mr. McMannis, an important witness, for his deposition. Moreover, Pioneer's proposal would require Applicant to incur the expense of another trip from Chicago to California.

Pioneer's Discovery Practices

16. Pioneer's discovery practices demonstrate a pattern of harassment. In what should have been a fairly straightforward case involving an Intent to Use application, Pioneer served, as of the close of discovery, 65 interrogatories, 46 requests for production, and 40 requests for admission. It has deposed two of Applicant's Vice-Presidents, and a 30(b)(6) witness for Hitachi America, Ltd., which is not a party to this action. It has also issued a deposition subpoena to Hitachi Home Electronics, Inc., another non-party, on short notice. It issued subpoenas *duces tecum* to both of those non-parties. It has also issued a subpoena *duces tecum* to Applicant. It filed an unsuccessful motion to compel, seeking massive amounts of irrelevant documents even though applicant had made hundreds of boxes of the documents available to it. Its own document production was scant and when the time for Pioneer's depositions came, it failed to produce the witnesses and provided neither a reasonable excuse nor adequate warning of its unilateral cancellation.

Proposed Sanctions

17. For Pioneer to put Applicant through extensive amounts of discovery on largely irrelevant issues and then fail to provide its own witnesses for depositions calls for a serious sanction. Pioneer provided no reasonable justification for its failure to appear. The Board would be within its authority to enter judgment against Pioneer in this Opposition. See, 37 C.F.R. 2.120(g)(1). Since the Board cannot hold Pioneer in contempt, or issue a monetary award to compensate Applicant for its wasted efforts, dismissal would be an appropriate way to respond to Pioneer's conduct.

18. Alternatively, the Board can, in the exercise of its authority to control the conduct of discovery, require Pioneer to produce its 30(b)(6) witness and Mr. McMannis for their depositions in Chicago at a time that is convenient for Applicant. See 37 CFR 2.121(a)(1); TBMP 403.04.

19. Finally, the Board should bar Pioneer from any further discovery. The discovery period has closed and should not be extended to accommodate Pioneer's seemingly insatiable desire to generate information which is of little or no relevance.

WHEREFORE, for the reasons stated herein, Applicant requests the Board enter judgment against Pioneer pursuant to the Board's authority to impose sanctions under 37 CFR 2.120(g)(2), and that the matter be dismissed with prejudice. Alternatively, Applicant requests the Board to impose such other sanctions it may deem appropriate to redress Pioneer's conduct in this proceeding.

Respectfully submitted,

DAVIS, MANNIX & McGRATH

Dated: 7-7-03

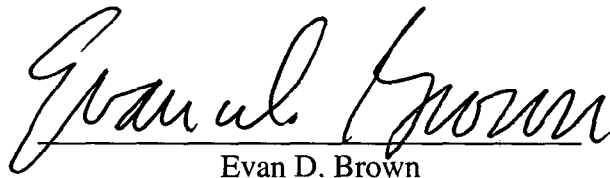
By: William T. McGrath

William T. McGrath
Evan D. Brown
DAVIS, MANNIX & McGRATH
125 S. Wacker Dr., Suite 1700
Chicago, IL 60606
Telephone: (312) 332-3033
Facsimile: (312) 332-6376
Attorneys for Applicant

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number EL947418015US

I hereby certify that the foregoing MOTION FOR SANCTIONS, INCLUDING DISMISSAL, PURSUANT TO 37 CFR §2.120(g)(2) is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on July 7, 2003.

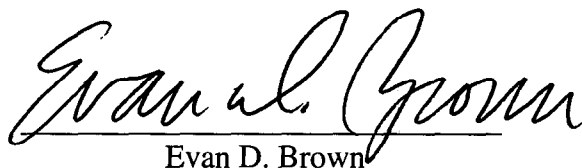


Evan D. Brown

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of July, 2003, a copy of the foregoing MOTION FOR SANCTIONS, INCLUDING DISMISSAL, PURSUANT TO 37 CFR §2.120(G)(2) was served via overnight courier on counsel for Opposer at the following address:

Robert James Skousen
Skousen & Skousen, P.C.
12400 Wilshire Boulevard
Suite 900
Los Angeles, CA 90025-1060



Evan D. Brown

3. I spoke with counsel for Pioneer Corporation, Robert J. Skousen, several times during the two weeks prior to the scheduled July 2, 2003 depositions. At least two

times Mr. Skousen orally confirmed that the noticed depositions would occur at the time and place scheduled on July 2, 2003.

4. At approximately 4:00 p.m. CST on June 30, 2003, I spoke by telephone with Mark Bush, an attorney from Mr. Skousen's office. During the course of that conversation, I asked Mr. Bush to have Mr. Skousen call me as soon as possible. I related to Mr. Bush that I would be leaving the office that day at about 5:15 p.m. CST, and would be traveling to California the next day. During the conversation, Mr. Bush made no mention of the fact that Pioneer would not produce the witnesses at the scheduled July 2, 2003 depositions. Neither Mr. Bush nor Mr. Skousen called me back before I left my office at approximately 5:15 p.m. CST. At no time before I left my office on June 30 was I given any indication that the depositions might not or would not proceed on July 2 as scheduled.

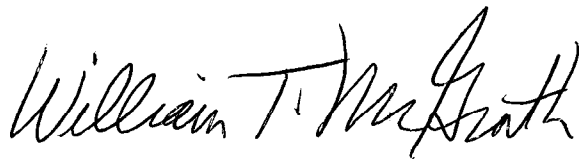
5. I left for California by airplane on the morning of July 1, 2003. Because my flight left first thing in the morning, I did not visit my office prior to leaving. As such, when I left for California, I was unaware of the fact that Mr. Skousen had, the evening before, sent to my office a faxed letter stating that Pioneer "will not be attending the depositions scheduled for July 2, 2003."

6. After arriving in Los Angeles on July 1, 2003, I learned of the cancellation of the depositions and spoke by telephone twice to Mr. Skousen. In each of these conversations I insisted that the depositions proceed on July 2. Mr. Skousen stated he did not learn of the unavailability of the witnesses until approximately 4:30 p.m. PST on June 30, 2003. Mr. Skousen represented unequivocally that Pioneer would not be producing any witnesses at the deposition, stating that the witnesses were "out of the state." No

reasonable explanation was provided as to why they were out of state on the day their depositions were scheduled, or why Pioneer did not inform anyone about this unavailability sooner.

7. On July 2, 2003, at the time and place scheduled for the depositions, I appeared. While Mr. Skousen was present, neither Mr. McMannis nor Pioneer's 30(b)(6) designee appeared.

Dated: July 7, 2003

A handwritten signature in black ink, reading "William T. McGrath". The signature is written in a cursive style with a large, stylized "M" and "G".

William T. McGrath

6/5/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FILE COPY

PIONEER KABUSHIKI KAISHA d/b/a
PIONEER CORPORATION,

Opposer,

v.

NISSEI SANGYO AMERICA, LTD. n/k/a
HITACHI HIGH TECHNOLOGIES AMERICA,
INC.,

Applicant.

Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

Published: March 19, 2002

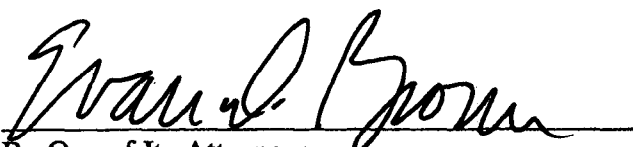
NOTICE OF DEPOSITION

TO: Craig McMannis
c/o Skousen & Skousen
12400 Wilshire Boulevard, Suite 900
Los Angeles, California 90025-1060

Please take notice that at 9:00 a.m. on July 2, 2003 at First Financial Plaza, 16890 Venture Boulevard, Suite 315, Encino, California 91436. Applicant Hitachi High Technologies America, Inc. ("Hitachi") will take the deposition of Craig McMannis. The deposition will take place pursuant to the applicable statutes and rules of procedure, and before a notary public or other person authorized to administer oaths.

Nissei Sangyo America, Ltd., n/k/a Hitachi
High Technologies America, Inc.

Date: June 5, 2003


By One of Its Attorneys

William T. McGrath
Stephen A. Gorman
Evan D. Brown
DAVIS, MANNIX & McGRATH
125 South Wacker Drive, Suite 1700
Chicago, Illinois 60606-4402
(312) 332-3033 (phone)
(312) 332-6376 (fax)



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION is being sent via overnight courier, in an envelope addressed to Robert J. Skousen, Esq., SKOUSEN & SKOUSEN, 12400 Wilshire Blvd., Suite 900, Los Angeles, California 90025-1060 on June 5, 2003.


Evan D. Brown

6/5/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FILE COPY

PIONEER KABUSHIKI KAISHA d/b/a
PIONEER CORPORATION,

Opposer,

v.

NISSEI SANGYO AMERICA, LTD. n/k/a
HITACHI HIGH TECHNOLOGIES AMERICA,
INC.,

Applicant.

Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

Published: March 19, 2002

**NOTICE OF DEPOSITION PURSUANT
TO FED. R. CIV. P. 30(b)(6)**

TO: Pioneer Kabushiki Kaisha d/b/a Pioneer Corporation
c/o Skousen & Skousen
12400 Wilshire Boulevard, Suite 900
Los Angeles, California 90025-1060

Please take notice that at 9:00 a.m. on July 2, 2003 at First Financial Plaza, 16890 Venture Boulevard, Suite 315, Encino, California 91436. Applicant Hitachi High Technologies America, Inc. ("Hitachi") will take the deposition of Opposer Pioneer Kabushiki Kaisha d/b/a Pioneer Corporation ("Pioneer").

Pursuant to Fed. R. Civ. P. 30(b)(6) and 37 C.F.R. 2.120(b), Opposer is hereby requested to designate and produce a person to testify on behalf of Opposer regarding the following matters:

- (a) Any likelihood of confusion or actual confusion between the marks that are the subject of this Opposition;
- (b) All goods sold by Pioneer under the mark ELITE.
- (c) The manner of the use by Pioneer of the mark ELITE.

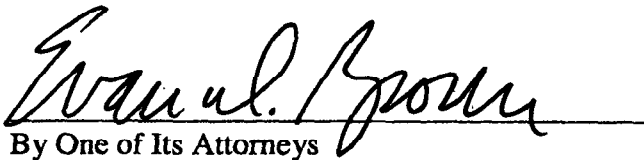


- (d) All advertising of the mark ELITE by Pioneer.
- (e) Channels of trade through which Pioneer has sold products under the ELITE mark.
- (f) Conditions under which sales of ELITE products have been made.
- (g) Pioneer's knowledge of Applicant's SUPERSCAN ELITE application and registration for computer monitors.
- (h) Conditions under which sales of ELITE products have been made.
- (i) Use, sale, and advertising of plasma or other Pioneer monitors as computer monitors.
- (j) Complaints received by Pioneer since 1998 regarding ELITE products.
- (k) The distribution chain of Pioneer ELITE products from manufacturer to the ultimate consumer.
- (l) The types of stores in which Pioneer sells ELITE products.

The deposition will take place pursuant to the applicable statutes and rules of procedure, and before a notary public or other person authorized to administer oaths.

**Nissei Sangyo America, Ltd., n/k/a Hitachi
High Technologies America, Inc.**

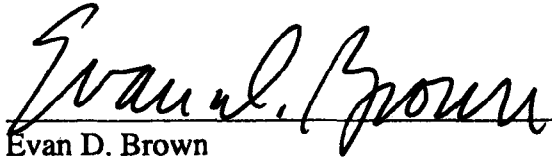
Date: June 5, 2003


By One of Its Attorneys

William T. McGrath
Stephen A. Gorman
Evan D. Brown
DAVIS, MANNIX & McGRATH
125 South Wacker Drive, Suite 1700
Chicago, Illinois 60606-4402
(312) 332-3033 (phone)
(312) 332-6376 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6) is being sent via overnight courier, in an envelope addressed to Robert J. Skousen, Esq., SKOUSEN & SKOUSEN, 12400 Wilshire Blvd., Suite 900, Los Angeles, California 90025-1060 on June 5, 2003.


Evan D. Brown

SKOUSEN & SKOUSEN

A Professional Corporation

SUITE 900

12400 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90025-1060

TELEPHONE: (310) 277-0444

TELECOPIER: (310) 782-9579

FACSIMILE TRANSMITTAL

DATE: June 30, 2003

TO: William T. McGrath, Esq.
Davis, Mannix, & McGrath

FAX NO: (312) 332-6376

FROM: Skousen & Skousen

RE: Pioneer Corp. v. Nissei Sangyo America, Ltd.

<input checked="" type="checkbox"/> Original by U.S. Mail	<input type="checkbox"/> Please Contact me
<input type="checkbox"/> For your information	<input type="checkbox"/> Please read and advise me how to reply
<input type="checkbox"/> Copy Via Electronic Mail	<input type="checkbox"/> For your review and comments

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION ONLY FOR THE USE OF THE INTENDED RECIPIENT NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY COPYING OF THIS COMMUNICATION OR DISSEMINATION OR DISTRIBUTION OF IT TO ANYONE OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA U.S. MAIL.

WE ARE TRANSMITTING 2 PAGES (including this cover sheet). IF TRANSMISSION IS NOT COMPLETE, PLEASE CALL (310) 277-0444. THANK YOU.



SKOUSEN & SKOUSEN
A PROFESSIONAL CORPORATION
SUITE 900
12400 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90025-1060
TELEPHONE (310) 877-0444
TELECOPIER (310) 782-9579

June 30, 2003

Via Facsimile (312) 332-6376 & U.S. Mail

William T. McGrath, Esq.
Davis, Mannix & McGrath
125 South Wacker Drive, Suite 1700
Chicago, Illinois 60606

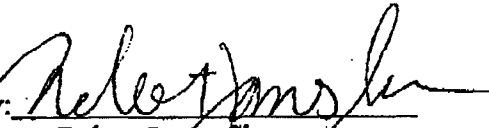
RE: Pioneer Corp. v. Hitachi High Technologies America, Inc.
TTAB Opposition Number 125,458
Cancellation of Depositions

Dear Mr. McGrath:

I have been informed by my client that Pioneer's 30(b)(6) designee, Russ Johnston, is now unavailable on July 2, 2003. In addition, we have not received the additional documents responsive to your production demands from our client. We, therefore, will not be attending the depositions scheduled for July 2, 2003. Accordingly, we suggest the following dates when Russ Johnston is available: July 14th, 15th, 16th, and 17th, 2003. Please advise us immediately which of these dates you intend to utilize for taking Mr. Johnston's deposition.

Very truly yours,

SKOUSEN & SKOUSEN
A Professional Corporation

By: 
Robert James Skousen

mhb:RJS

Receive Log

StatuAtType PrName	Date	Pages	Phone Number/CallerId
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3

4

5 PIONEER KABUSHIKI KAISHA)
6 d/b/a PIONEER CORPORATION,)
7)
8) Opposition No.: 125,468
9) vs.
10 NISSEI SANGYO AMERICA, LTD.,) Affidavit of
) Nonappearance
) of Witness
) Applicant.

11

12

13

14

15

16 AFFIDAVIT OF NON-APPEARANCE:

17

CRAIG McMANNIS

18

WEDNESDAY, JULY 2, 2003

19

9:12 A.M.

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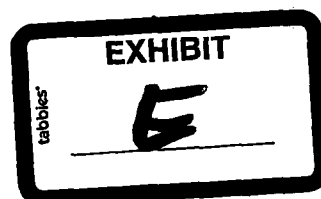
23 REPORTED BY:

24

MARJORIE H. CROSBY

25

CSR NO. 8580, RMR



1 Nonappearance of CRAIG McMANNIS, the witness, to
2 be taken on behalf of the Applicant, HITACHI HIGH
3 TECHNOLOGIES AMERICA, on Wednesday, July 2, 2003,
4 at 9:12 a.m., at 16830 Ventura Boulevard, Suite 315,
5 Encino, California, before Marjorie H. Crosby, CSR
6 No. 8580, RMR.

7

8 APPEARANCES OF COUNSEL:

9

10 FOR APPLICANT:

11 DAVIS, MANNIX & McGRATH

12 BY: WILLIAM T. McGRATH, ESQ.

13 125 South Wacker Drive

14 Suite 1700

15 Chicago, Illinois 60606

16 (312) 332-4748

17

18 FOR OPPOSER:

19 SKOUSEN & SKOUSEN

20 BY: ROBERT JAMES SKOUSEN, ESQ.

21 12400 Wilshire Boulevard

22 Suite 900

23 Los Angeles, California 90025-1060

24 (310) 277-0444

25

1	E X H I B I T S		
2	DEPOSITION	DESCRIPTION	PAGE
3	1	Copy of Deposition Notice	5
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1 STATE OF CALIFORNIA)

2) SS

3 COUNTY OF LOS ANGELES)

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5 I, MARJORIE CROSBY, CSR No. 8580, Certified
6 Shorthand Reporter in and for the State of California,
7 do hereby certify:

8 That at the request of WILLIAM T. McGRATH,
9 ESQ. of the law firm of DAVIS, MANNIX & McGRATH,
10 attorneys for the Applicant HITACHI HIGH
11 TECHNOLOGIES, INC., in the above-entitled action, I
12 appeared at 16830 Ventura Boulevard, Suite No. 315,
13 Encino, California, at 9:12 a.m., on Wednesday, July
14 2, 2003, for the purpose of administering the oath to
15 and reporting the deposition of CRAIG McMANNIS;

16 That at the hour of 9:12 a.m., being that it
17 was evident that no appearance would be made by the
18 witness CRAIG McMANNIS, the following record was
19 made:

20 MR. McGRATH: Good morning. I am William T.
21 McGrath, counsel for Hitachi High Technologies
22 America, Inc., in the above-captioned opposition
23 proceeding.

24 This is the deposition of Mr. Craig
25 McMannis, an employee of the opposer Pioneer

1 Corporation, formal name of the company is Pioneer
2 Kabushiki Kaisha doing business as Pioneer
3 Corporation.

4 The date is July 2, 2003 and the time is
5 9:12 a.m. This deposition is taking place at the
6 offices of Legalink court reporting services, 16830
7 Ventura Boulevard, Encino, California.

8 A notice of this deposition was served on
9 counsel for Pioneer Corporation, Robert J. Skousen,
10 at his Los Angeles offices by overnight delivery on
11 June 5, 2003. A copy of the deposition notice is
12 being placed in the record as Exhibit 1.

13 (The document referred to was marked as
14 Deposition Exhibit 1 for identification.)

15 MR. McGRATH: Mr. Skousen was fully aware
16 that the deposition was scheduled to take place today
17 at this place and time and confirmed that to me
18 orally last week.

19 In addition, a subpoena issued under Federal
20 Rule of Civil Procedure 45 was served on Pioneer's
21 counsel yesterday concerning Mr. McMannis's
22 deposition. Nevertheless, Mr. Skousen stated to me
23 in a telephone conversation yesterday after I had
24 arrived in California that Mr. McMannis would not
25 appear for this deposition today.

1 I stated to Mr. Skousen we intended to
2 proceed with this deposition this morning and that he
3 should appear with Mr. McMannis. Mr. Skousen is here
4 this morning but he's advised me that Mr. McMannis
5 will not appear.

6 Consequently, since the witness will not
7 appear, this deposition is concluded. Hitachi High
8 Technologies America reserves the right to reconvene
9 the deposition at another time and place and reserves
10 the right to seek all available remedies for
11 Mr. McMannis's failure to appear, including dismissal
12 of the opposition proceeding and contempt of court.

13 I would ask the court reporter to mark the
14 Notice of Deposition as Exhibit 1. That's all I
15 have.

16 Do you want to add anything to the record?

17 MR. SKOUSEN: I will echo my comments I
18 previously made and that is Mr. McMannis is no longer
19 in the position at the company where he would be the
20 designee under 30(b)6. Mr. Johnston would serve that
21 function but Mr. Johnston is not available and I was
22 informed on Monday at 4:30 that Mr. Johnston would
23 not be available on July 2nd, however, Mr. Johnston
24 is available on July 14th.

25 MR. McGRATH: Mr. McMannis?

1 MR. SKOUSEN: No, Mr. Johnston.

2 Mr. Johnston is available on the 14th, 15th,
3 16th and 17th of July to take his deposition.

4 *** *** ***

5 At the hour of 9:14 a.m., I departed without
6 having taken the deposition of said witness.

7 I hereby certify that I am not counsel to
8 any of the parties herein nor in any manner
9 interested in the outcome of such action.

10 In witness whereof, I have hereunto
11 subscribed my name this 2nd day of July, 2003.

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MARJORIE H. CROSBY

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CA CSR 8580, RMR, RPR

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3

4

5 PIONEER KABUSHIKI KAISHA)
6 d/b/a PIONEER CORPORATION,)
7 Opposer,)
8 vs.)
9 NISSEI SANGYO AMERICA, LTD.,) Affidavit of
10) Nonappearance
) of Witness
) Applicant.)

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16 AFFIDAVIT OF NON-APPEARANCE:

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RUSSELL JOHNSTON

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WEDNESDAY, JULY 2, 2003

19

9:07 A.M.

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23 REPORTED BY:

24

MARJORIE H. CROSBY

25

CSR NO. 8580, RMR



1 Nonappearance of RUSSELL JOHNSTON, the witness, to
2 be taken on behalf of the Applicant, HITACHI HIGH
3 TECHNOLOGIES, INC., on Wednesday, July 2, 2003, at
4 9:07 a.m., at 16830 Ventura Boulevard, Suite 315,
5 Encino, California, before Marjorie H. Crosby, CSR
6 No. 8580, RMR.

7

8 APPEARANCES OF COUNSEL:

9

10 FOR APPLICANT:

11 DAVIS, MANNIX & McGRATH

12 BY: WILLIAM T. McGRATH, ESQ.

13 125 South Wacker Drive

14 Suite 1700

15 Chicago, Illinois 60606

16 (312) 332-4748

17

18 FOR OPPOSER:

19 SKOUSEN & SKOUSEN

20 BY: ROBERT JAMES SKOUSEN, ESQ.

21 12400 Wilshire Boulevard

22 Suite 900

23 Los Angeles, California 90025-1060

24 (310) 277-0444

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1	E X H I B I T S		
2	DEPOSITION	DESCRIPTION	PAGE
3	1	Copy of 30(b)6 deposition notice	5
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1 STATE OF CALIFORNIA)

2) SS

3 COUNTY OF LOS ANGELES)

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5 I, MARJORIE CROSBY, CSR No. 8580, Certified
6 Shorthand Reporter in and for the State of California,
7 do hereby certify:

8 That at the request of WILLIAM T. McGRATH,
9 ESQ. of the law firm of DAVIS, MANNIX & McGRATH,
10 attorneys for the Applicant HITACHI HIGH TECHNOLOGIES
11 AMERICA, INC., in the above-entitled action, I
12 appeared at 16830 Ventura Boulevard, Suite No. 315,
13 Encino, California, at 9:07 a.m., on Wednesday, July
14 2, 2003, for the purpose of administering the oath to
15 and reporting the deposition of RUSSELL JOHNSTON;

16 That at the hour of 9:07 a.m., being that it
17 was evident that no appearance would be made by the
18 witness RUSSELL JOHNSTON, the following record was
19 made:

20 MR. McGRATH: Good morning. I am William T.
21 McGrath, counsel for Hitachi High Technologies
22 America, Inc. in the above-captioned opposition
23 proceeding. This is the deposition of opposer
24 Pioneer Kabushiki Kaisha, doing business as Pioneer
25 Corporation, pursuant to Federal Rule of Civil of

1 Procedure 30(b)6.

2 The date is July 2, 2003 and the time is
3 9:07. The deposition is taking place at the offices
4 of Legalink Court Reporting Services, 16830 Ventura
5 Boulevard, Encino, California.

6 A notice of this deposition was served on
7 counsel for Pioneer Corporation, Robert J. Skousen,
8 at his offices in Los Angeles by overnight delivery
9 on June 5, 2003. A copy of the 30(b)6 deposition
10 notice will be placed in the record as Exhibit 1.

11 Mr. Skousen was fully aware that the
12 deposition was scheduled to take place today at this
13 place and time and confirmed to me orally last week
14 that fact. In fact, Mr. Skousen is here today.

15 In addition, a subpoena issued under Federal
16 Rule of Civil Procedure 45 was issued and served on
17 Pioneer's counsel yesterday, I believe.

18 Nevertheless, Mr. Skousen has stated to me
19 yesterday in a telephone conversation after I had
20 arrived in California that Pioneer Corporation would
21 not appear for this deposition today. I stated to
22 Mr. Skousen that we intended to proceed with this
23 deposition this morning and that he should appear
24 with Pioneer's 30(b)6 designee.

25 Mr. Skousen is here this morning but he has

1 advised me that there is no 30(b)6 designated witness
2 for Pioneer.

3 Since a witness for Pioneer has not
4 appeared, subject to any additional comments for the
5 record by Mr. Skousen, the deposition is hereby
6 concluded.

7 Hitachi High Technologies America reserves
8 the right to reconvene the deposition at another time
9 and place, and reserves the right to seek all
10 available remedies for Pioneer's failure to appear
11 including dismissal and contempt of court.

12 With that I would ask you to mark this as
13 Exhibit 1.

14 (The document referred to was marked as
15 Deposition Exhibit 1 for identification.)

16 MR. McGRATH: Bob, did you want to add
17 anything to the record?

18 MR. SKOUSEN: I just want to say on Monday
19 at about 4:30 I was informed that Pioneer's designee
20 for this 30(b)6 deposition, Russell Johnston, would
21 not be available to appear today, July 2nd, however,
22 would be available July 14th, 15th, 16th or 17th.

23 Although we did send a letter to Mr. McGrath
24 it arrived after Mr. McGrath had left his office on
25 Monday and then he was in transit on Tuesday, and I

1 did speak with him yesterday and informed him by
2 phone as well that Pioneer would not be appearing
3 today but would be available on July 14th, 15th, 16th
4 and 17th.

5 *** *** ***

6 At the hour of 9:10 a.m., I departed without
7 having taken the deposition of said witness.

8 I hereby certify that I am not counsel to
9 any of the parties herein nor in any manner
10 interested in the outcome of such action.

11 In witness whereof, I have hereunto
12 subscribed my name this 2nd day of July, 2003.

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MARJORIE H. CROSBY

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CA CSR 8580, RMR, RPR

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TTAB

DAVIS, MANNIX & McGRATH
ATTORNEYS AT LAW
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SUITE 1700
CHICAGO, ILLINOIS 60606-4402
(312) 332-3033

EVAN D. BROWN
ebrown@dmmlaw.com

FAX: (312) 332-6376

July 7, 2003

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

07-08-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #11

**RE: Pioneer Corp. v. Hitachi High Technologies America, Inc.
Opposition No. 125,458**

Dear Sir or Madam:

Please find enclosed the following documents:

1. MOTION FOR SANCTIONS, INCLUDING DISMISSAL, PURSUANT TO 37 CFR 2.120(G)(2) with Exhibits;
2. Postcard for confirmation of your receipt of this correspondence.

03 JUL 22 PM 6:31
U.S. PATENT & TRADEMARK OFFICE

Sincerely,

DAVIS, MANNIX & McGRATH



Evan D. Brown

Enclosures
EDB:st

